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C O N F I D E N T I A L SECTION 01 OF 04 ABUJA 001749

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DOE FOR CAROLYN GAY

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TAGS: [PGOV](#) [PINR](#) [KDEM](#) [KJUS](#) [NI](#)

SUBJECT: BUHARI LAWYER ON THE PRESIDENTIAL ELECTION TRIBUNAL

REF: A. ABUJA 1693

[1](#)B. ABUJA 1467

[1](#)C. ABUJA 1440

[1](#)D. ABUJA 1397

[1](#)E. ABUJA 922

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Classified By: CDA Robert Gribbin for Reasons 1.4 (b & d).

[1](#)1. (C) SUMMARY: Buhari's attorney Mike Ahamba (strictly protect) expressed displeasure at the pace of the Presidential Election Tribunal proceedings, averred that his case is solid, and maintained hope in the impartiality of the tribunal process. When the tribunal's substantive hearing begins in early October, Ahamba will argue that the election preparations were flawed and inadequate and, secondarily, that INEC colluded with the security services to engage in significant electoral malfeasance, which substantially affected the outcome of the elections. While confident in the merits of his argument, Ahamba bemoans the court's inability or unwillingness to compel INEC and other respondents to file responses, thereby delaying proceedings. Ahamba does not oppose a consolidation of the ANPP and Buhari's petitions, though he distrusts the ANPP's intentions. He is far more likely to consolidate Buhari's petition with the Action Congress/Atiku, given Atiku's access to resources and evidence. Unlike in 2003 when Ahamba spent thirty months in court only to have the petition struck out, this time around Ahamba's tactic of focusing on the technical aspects of the preparations for and conduct of elections may prove more effective. However, the tribunal's failure to censure INEC for its refusal to furnish documents seriously constrains his ability to argue his case regardless of its merits. END SUMMARY.

EXTENSIONS, PROCEDURAL ISSUES DELAY PROCEEDINGS

[1](#)2. (C) On August 13, PolOff spoke with Barrister Mike Ahamba (strictly protect), lead counsel for ANPP presidential candidate Muhammadu Buhari, to discuss Buhari's petition at the Presidential Election Tribunal. At present, tribunal proceedings remain delayed by procedural issues, as the court rules on motions for extensions. When the tribunal reconvenes on August 14, Ahamba expects INEC to request an extension. However, according to his interpretation of the

electoral law, Ahamba maintains the tribunal lacks the competence to grant extensions. He told PolOff the Electoral Act mandates that defendants file their responses within a reasonable time (not to exceed twenty-one days) after being served.

¶3. (C) COMMENT: While the tribunal has not yet granted respondents extensions, it has ruled that defendants President Yar'Adua and Vice President Jonathan were not "properly served," and therefore, need not enter a response. On the other hand, the tribunal has yet to enforce its court order on INEC to file a response. This may not connote an extension per se; however, the resulting delay is the same. Although frustrated that the court is granting respondents too much leeway, Ahamba must balance his frustration and his fear. Ahamba intimated to PolOff that he is fearful of taking on the justices -- who have reportedly described him as a "nuisance" and who may, at any time, decide to throw out his case entirely. Ahamba's sole recourse may be to argue that a defendant's failure to duly respond within the timeframe implies an admission of guilt. END COMMENT.

MAY CONSOLIDATE WITH ATIKU, DISTRUSTS ANPP

¶4. (C) While Ahamba dismissed reports that he agreed to the ANPP's July 30 request that the tribunal consolidate its petition with Buhari's, he said he is not opposed, in principle, to a consolidation. His acquiescence, however, would only be based on the condition that upon consolidation, the petitions cannot be withdrawn without his consent. Ahamba implied that the ANPP may use the consolidation as a ploy to withdraw Buhari's case, as it has been unsuccessful at convincing Buhari to do so otherwise. According to Ahamba, consolidation benefits the ANPP since it is lacking in evidence and credibility. Ahamba declared he would consider consolidating Buhari and AC/Atiku's petitions,

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acknowledging that Atiku has greater access to INEC documents and resources. The tribunal will rule on August 20 whether to accept the ANPP's request for consolidation.

ELECTIONS PREP, CONDUCT, RESULTS FLAWED

¶5. (C) Ahamba expects to begin arguing Buhari's case in early October. He seeks to prove through a preponderance of evidence that INEC failed to conduct the elections in accordance with electoral law. Secondarily, he will argue that INEC colluded with the security services (as well as the Inspector General of Police) to rig the elections. Ahamba has also named former president Obasanjo as a respondent, claiming that as Commander-in-Chief, Obasanjo exploited his access to the armed forces and ordered them to commit electoral malpractices. Moreover, Ahamba will argue that President Yar'Adua and Vice President Jonathan schemed with the former president to rig the elections. By focusing on elections preparations and not simply the conduct of elections on April 21, Ahamba believes he has a solid chance of proving his case.

¶6. (C) According to Ahamba, given that elections preparations were flawed and insufficient, the conduct of elections and therefore the election results would have to be judged as commensurately flawed. Ahamba said he hopes to "exploit INEC's incompetence" by highlighting INEC's inadequate elections preparations (for example: incomplete or falsified voter registers, non-identification of polling units, non-delivery of materials, non-sequential numbering of ballots) which forestalled the possibility of free and fair elections. As well, Ahamba will argue that election results were declared in some places where no balloting materials were delivered. Ahamba says he will also try to demonstrate that voter registers in some polling units had either not been marked at all or had been insufficiently marked.

¶7. (C) Ahamba complained that INEC remains reticent in fulfilling the orders of the tribunal. He told PolOff he has heard from "highly placed sources" within INEC that INEC is "doctoring" evidence and that this explains INEC's delay. Should the tribunal grant INEC an extension, Ahamba plans to enter a counter-motion to suppress INEC's response if/when it is filed. Ahamba confided to PolOff that INEC has "become more cooperative" in supplying documents since he re-filed the contempt of court charge against INEC Chairman Maurice Iwu on July 16. Should he assemble INEC documentary evidence from 3/4 of the local government areas, wards, and polling units in 15 states, Ahamba believes that he will have adequate evidence to prove his case. Ahamba told PolOff the INEC evidence he currently possesses was gathered surreptitiously. Ahamba's allegations against INEC are also criminal in nature; however, he will wait to enter criminal charges against INEC until after the tribunal rules on his civil case. (NOTE: A civil case requires a preponderance of evidence while a criminal case requires proof beyond a reasonable doubt. At the election tribunals in 2003, both civil and criminal cases required proof beyond a reasonable doubt. END NOTE.)

¶8. (C) Ahamba will also rely on witness testimony. He told PolOff several police commissioners have approached him privately, recounting stories of ballot papers thumb-printed in the offices of other police commissioners. The commissioners confided that, out of fear of reprisal or bodily harm, they felt compelled to engage in electoral fraud, including the stuffing and stealing of ballot boxes and intimidation of voters. Ahamba has deposed one police commissioner and will call him as a witness. To protect his other witnesses (including resident electoral commissioners), Ahamba has kept their identities confidential. Ahamba told PolOff he will also call accredited domestic and international election monitors, including those from the United States and European Union, to testify. While the testimony of international monitors will serve as tertiary evidence, Ahamba believes they will be viewed as more credible and impartial.

TRIBUNALS MAY OFFER IMPARTIAL, FAIR HEARING

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¶9. (C) Ahamba believes that the tribunals may offer an impartial and fair hearing of Buhari's petition -- in contrast to the 2003 proceedings which he adjudged a "judicial calamity". Unlike in 2003, when Ahamba spent thirty months in court representing Buhari's petition against Obasanjo, Ahamba expects the courts to wrap up proceedings more expeditiously this time. Should Buhari's petition fail at the tribunal level, Ahamba is confident that the Supreme Court will offer a fair consideration of the petition. As a litmus test for the Supreme Court, Ahamba informed, he is preparing to appeal two tribunal rulings: (1) on June 22, the tribunal struck out Ahamba's request for a bench warrant against INEC Chairman Iwu ruling that Iwu had not been properly served; and (2) on July 30, the tribunal pronounced that Buhari's petition had not been properly served on Yar'Adua and Jonathan, mandating a renewed service.

¶10. (C) With respect to the fairness of the electoral law itself, Ahamba has mixed emotions. He contends that certain amendments to the 2006 law have served to remove many safeguard provisions, such as party agent certification of materials. Ahamba maintains the court's interpretation of the electoral law does not/not presume that INEC is innocent. The presumption of innocence exists, Ahamba observes, if the elections were otherwise conducted regularly. Since he will argue the conduct of elections was irregular, he maintains it follows that there can be no presumption of innocence. When asked about Federal Court of Appeal President Justice Abdullahi Umaru, Ahamba opined that although he is not known

to be corrupt, his impatience is a serious flaw that can be injurious in a court of law. Ahamba believes that the tribunal judges, having been compromised in the past, want to "right their wrongs" and therefore, are likely to be impartial, non-partisan arbiters.

BUHARI'S PETITION TIMELINE

¶11. (U) The 2006 Electoral Act (Ref. D) mandates that aggrieved candidates contesting election results submit petitions by the May 21 deadline, naming all respondents and appending all evidence. Following is the timeline in the Buhari tribunal case:

May 14: Court orders INEC to release to Buhari's legal team any elections-related documents for inspection and re-production. Documents requested include the ballot, tabulation, and result sheets from the thirty-six states, list of ad-hoc staff employed at all local government areas, wards, and polling units nation-wide, and copies of voter registers from all states.

May 20: Ahamba files Buhari's petition.

May 21: Ahamba enters a motion to permit the rolling inclusion of additional evidence for the complainant as it becomes available.

May 21: Ahamba applies for a bench warrant against INEC Chairman Maurice Iwu for refusing to comply with the court's May 14 directive to furnish documents.

June 22: Tribunal strikes down Iwu's contempt of court charge, ruling that Iwu had not been "properly served" the bench warrant. Tribunal grants Ahamba's request to allow substituted service of Buhari's petition on respondents President Umaru Yar'Adua and Vice President Goodluck Jonathan.

July 9: Although Ahamba claims that he served the petition for respondents Yar'Adua and Jonathan to designated substitute former PDP National Secretary Ojo Maduekwe, Court of Appeals President Justice Abdullahi Umaru rules that such service was not "properly" conducted.

July 16: Ahamba re-opens the contempt of court charge against Iwu.

July 17: Nigerian Police Force applies for an extension for its response.

August 21: The tribunal is due to conclude the pre-trial

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hearing of all pending technical, procedural motions.

¶12. (SBU) While the Nigerian press reported that the tribunal began hearing Buhari's substantive case on July 30, in fact, the case has remained hamstrung by procedural minutiae. Ahamba claims that he has tried to serve his petition on former president Obasanjo, but to no avail. When the tribunal reconvenes on August 14, Ahamba expects to apply to the tribunal for substituted service on Obasanjo.

BACKGROUND ON AHAMBA AND VIEWS ON BUHARI

¶13. (C) A barrister for almost thirty years, Mike Ahamba has also entertained ambitions for public office, serving in the Imo State House of Assembly from 1979-1983 and mounting unsuccessful bids for the governorship of Imo state in 1983 and 2003. In May, Ahamba maintains he was approached on several occasions and offered huge sums of money and a seat in the Imo State Assembly to cease representing Buhari. Ahamba also confided that he has received death threats and

has been told by the SSS to vary his routes and change his residence. He claims he denied an SSS offer of a bullet-proof vest.

¶14. (C) Ahamba remains confident that Buhari's best recourse is to seek redress through the tribunal process. Ahamba advised Buhari in April to disregard calls from within his camp to stage mass street demonstrations in protest. Instead, Ahamba counseled Buhari to pursue constructive engagement, noting that street protests could not be sustained and displayed cowardice and impatience. Rather than a violent revolution, Ahamba asserts, he trusts in a constitutional revolution, where the judiciary is employed to annul the elections constitutionally thereby encouraging respect for the rule of law. Even a failed petition, in Ahamba's view, allows for participation in the political process.

COMMENT: IT'S NOT WHAT YOU KNOW, BUT WHAT YOU CAN PROVE

¶15. (C) Elections in Nigeria have been characterized as a do or die affair. In this David-and-Goliath like epic, Ahamba is determined to take on the Nigerian heavy-weights. Buhari's first court battle in 2003 ended in defeat, in part, Ahamba admits, due to Ahamba's own incompetence and naiveté. This time, however, Ahamba's strategy of focusing on the more technical preparations for and conduct of the elections may prove more effective. This, of course, hinges on Ahamba's ability to actually obtain the documents he needs from INEC. That INEC has to date not supplied such documents, fuels fears that, in fact, no such documents exist. The tribunal's unwillingness to censure INEC for its failure to produce the documents, or for that matter to compel any of the defendants to file a response post-deadline, throws doubt on the impartiality and fairness of the tribunal process. In light of the widespread acknowledgment that the April elections were significantly flawed, it would seem difficult to surmise the courts ruling otherwise. Of course, in a court of law it is not what you know, but what you can prove. END COMMENT.
GRIBBIN